



# STATE OF ARKANSAS

## Office of the Attorney General

Winston Bryant  
Attorney General

Telephone  
(501) 682-2067

### Opinion No. 94-140

June 23, 1994

The Honorable Jerry Hunton  
State Representative  
14221 Greasy Valley Road  
Prairie Grove, Arkansas 72753

Dear Representative Hunton:

This is in response to your request for an opinion on four questions, which I will set forth below and address in the order posed.

1. The United States Environmental Protection Agency (EPA) has issued regulations, referred to as the "503 regulations," pertaining to sludge. The State of Arkansas has not adopted these regulations to date. Is it mandatory for the state to adopt the "503 regulations" and if so by what date?

The "503 regulations" adopted by the EPA refer to those regulations, codified at 40 C.F.R. § 503 (1993), establishing standards for the use or disposal of sewage sludge. Arkansas has not adopted these regulations, and it is my opinion that the state may, but is not required, to do so. All facilities which fall within the scope of the "503 regulations" must meet the requirements contained therein, regardless of whether the state in which they are located has adopted the regulations. Pursuant to 40 C.F.R. § 501.1 (1993), a state may, upon approval from the EPA, establish its own sludge management program. Upon approval of such a state program, the EPA will suspend the issuance of federal permits for those activities subject to the approved state program. See 40 C.F.R. § 501.1(f). While Arkansas has not yet adopted the "503 regulations," it is my understanding that the Water Division of the Arkansas Department of Pollution Control and

Ecology is in the process of amending its National Pollutant Discharge Elimination System (NPDES) regulations to add the "503 regulations" in order to establish a state sludge program, as provided for in 40 C.F.R. § 501, and thus to facilitate state enforcement of the "503 regulations."

2. The United States Environmental Protection Agency (EPA) has issued regulations, referred to as the "Subtitle D regulations," pertaining to solid waste disposal. The State of Arkansas has not adopted these regulations to date. Is it mandatory for the state to adopt these regulations and if so by what date?

The "Subtitle D regulations" refer to those regulations adopted by the United States Environmental Protection Agency on October 9, 1991, and found at 56 Federal Register 51016 (codified at 40 C.F.R. §§ 257 & 258). These regulations contain the criteria for use under the Resource Conservation and Recovery Act (RCRA) in determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment. See 40 C.F.R. § 257.1 (1993). The regulations also establish minimum national criteria under the RCRA, as amended, for all municipal solid waste landfill units and under the Clean Water Act, as amended, for municipal solid waste landfills that are used to dispose of sewage sludge. See 40 C.F.R. § 258.1 (1993). With regard to your question, you are incorrect when you state that Arkansas has not adopted the "Subtitle D regulations." On June 4, 1993, the Arkansas Pollution Control and Ecology Commission approved the incorporation of EPA Subtitle D Criteria into Arkansas Solid Waste Management Code Regulation No. 22. See Addendum to Arkansas Solid Waste Management Code 1993 (stating "[t]he new Section XII-B to be added to Chapter 4 of Regulation 22 for the Incorporation of Federal Regulations is applicable to Class I Landfills only.... 40 CFR Parts 257 and 258 as adopted by USA EPA ... are hereby adopted as provisions of the Arkansas Solid Waste Management Code (Regulation 22) as set forth herein line for line and word for word.") It is my understanding that the effective date of the provisions adopted by reference as provisions of Regulation 22 is the date that the EPA approved the Arkansas Department of Pollution Control and Ecology as the state agency responsible for implementing the state municipal solid waste management program.

3. In the State of Arkansas to date, the Department of Pollution Control and Ecology (PC & E) has not adopted

regulations for the development of composting operations or testing parameter guidelines only. What legal authority does PC & E have in requiring a permitting process for a composting operation?

I assume that your question inquires as to whether the Department of Pollution Control and Ecology would have the authority to establish a permit program with regard to composting operations if it chose to do so. In my opinion, the department would in all likelihood have such authority pursuant to A.C.A. § 8-1-202(b) (Repl. 1993), which provides that the director of the Department of Pollution Control and Ecology shall be the "executive officer and active administrator of all pollution control activities in the state" and as such, his duties shall include "[t]he administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state." While PC & E has not yet developed regulations with regard to composting operations only (note, however, that current laws and regulations on solid waste may affect composting operations), it is my understanding that the Solid Waste Division at PC & E is currently overseeing any composting operation that does not involve the addition or recycling of liquids.

4. Under the Department of Pollution Control and Ecology (PC & E), a grant program exists on recycling. Communities pay \$1.50 per ton to support this program. If a regional solid waste district awards a grant to one community in the district, does the recipient of the grant have the latitude to charge the other communities for the dropping of their recyclables? Would this not be charging the citizens of the regional solid waste district twice?

I assume that this question refers to the "Solid Waste Management and Recycling Fund Act," which is codified at A.C.A. §§ 8-6-601 to -611 (Repl. 1993). Pursuant to A.C.A. § 8-6-605, the "Solid Waste Management and Recycling Fund," as established on the books of the State Treasurer, State Auditor, and chief fiscal officer of the state, is to be administered by the Arkansas Department of Pollution Control and Ecology, which shall authorize grants and administrative expenditures from the fund according to the provisions of the Solid Waste Management and Recycling Fund Act. All landfill disposal fees, collected pursuant to A.C.A. § 8-6-606 & 607,

are to be deposited in this fund. A.C.A. § 8-6-605.<sup>1</sup> The purpose of the grant program established by the act is to assist local governments and districts in developing solid waste management plans, programs, and facilities that integrate recycling as a functional part of the solid waste management system. A.C.A. § 8-6-609(a). Any county, city, regional or other solid waste authority is eligible for a grant pursuant to the rules and regulations adopted by the Arkansas Pollution Control and Ecology Commission. A.C.A. § 8-6-609(b)(1). Regional solid waste management districts are responsible for the grant application process and acceptance of grant applications from its district members, and the districts prioritize and select grant projects from the district members. A.C.A. §§ 8-6-609(c)(5)(A) & (B).

As to your fourth question, which I assume refers to the grant program which I have described above, it is my opinion that the receipt of grant funds does not prohibit the imposition of any fees or charges that a regional solid waste district or local government may be otherwise authorized to charge for the handling of solid waste or materials for recycling. The grant program established under the Solid Waste Management and Recycling Act is, in my opinion, designed to provide support and incentives for the recycling operations of a district or local government, not to fund them outright or be a substitute for the fees which may be otherwise authorized.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Nancy A. Hall.

Sincerely,



WINSTON BRYANT  
Attorney General

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<sup>1</sup>I assume that you are referring to A.C.A. § 8-6-606(a)(2) when you note in your question that communities pay a \$1.50 per ton fee to support the recycling program. Section 8-6-606(a)(2) provides that if a landfill permittee (including cities and counties which hold a solid waste disposal permit) chooses to operate on a weight basis, the landfill disposal fee shall be \$1.50 for each ton of solid waste received at the landfill. The fees collected pursuant to this section are required to be deposited in the "Solid Waste Management and Recycling Fund." A.C.A. § 8-6-605.